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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 9, 2007

The Honorable Condoleezza Rice
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madam Secretary:

I am writing to raise new concerns about the State Department's \$600 million U.S. Embassy in Iraq. On July 26, 2007, the Committee held a hearing to review reports of numerous problems with the Embassy construction project. In particular, the Committee asked about allegations of substandard work by the prime contractor, First Kuwaiti General Trading & Contracting Company, and whether problems with the fire protection systems, electrical systems, and power plant would delay the opening of the Embassy beyond its September 2007 completion date and increase the costs to the taxpayer above the \$592 million budget.

At the hearing, Maj. Gen. Charles Williams (Ret.), the Director of Overseas Building Operations (OBO) at the State Department, dismissed all of these concerns, stating emphatically:

I am pleased to report, Mr. Chairman, that the project is on schedule and on budget. We are slated to complete the project in September of this year and personnel can begin to move into offices and residences shortly thereafter. As to project quality, OBO is proud of its employees and contractors work on this project. We have received numerous accolades as to the extremely high quality of construction. It is among the best that OBO has managed.

This weekend, however, it was disclosed that the Embassy construction project has gone \$144 million over budget and the State Department has delayed its opening indefinitely.¹

The Committee has now obtained new documents that raise additional questions about the Embassy project and First Kuwaiti. One of these documents is a recent report on the

¹ Iraq Embassy Cost Rises \$144 Million Amid Project Delays, Washington Post (Oct. 7, 2007).

Embassy's fire suppression system. This report was completed by inspectors from the State Department's Fire Protection Division and issued on September 4, 2007, based on inspections conducted between August 17 and September 2. The report finds:

- "The NEC [New Embassy Compound] is not ready for tests and the Contractor could not provide a timeline for completion."
- "Because the fire service mains are deficient, there is no reliable automatic fire sprinkler system coverage in any building on the compound."
- "None of the fire alarm detection systems were ready for testing at the time of arrival and none were completed during this site visit."
- "The Contractor continues to struggle with an understanding of the project specifications."
- "Most buildings have a complete lack of firestopping in fire rated walls and floors. Unless all openings in rated walls and floors are firestopped using approved methods and materials, a fire could spread very quickly from one area to another. This is especially true because the sprinklers are not in service."
- "[T]he entire installation is not acceptable."

Other documents reveal that the Justice Department has asserted in court papers that the Managing Partner of First Kuwaiti, the prime contractor, bribed officials to obtain subcontracts for First Kuwaiti. According to these documents, Wadih El Absi agreed to pay over \$200,000 in kickbacks to obtain subcontracts under a Halliburton subsidiary's multi-billion dollar contract to provide logistical support for U.S. troops in Iraq. Mr. El Absi operates First Kuwaiti as a foreign corporation out of Kuwait and refused to travel to the United States to testify at the Committee's hearing in July.

A third set of documents show that Pentagon auditors raised serious questions about the performance of First Kuwaiti before the State Department awarded the Embassy contract to First Kuwaiti. According to these documents, the Pentagon auditors released a report several months before the award of the contract that questioned more than \$130 million that First Kuwaiti had billed for services provided to the U.S. military.

I am growing increasingly dismayed by the State Department's resistance to responsible oversight. At the July hearing, State Department officials repeatedly and erroneously told the Committee that the Embassy would be completed on time and under budget. When the Committee investigated the State Department's oversight of Blackwater, the Committee received significantly more cooperation from Blackwater than from the Department. And when the Committee held a hearing last week to investigate corruption in the Maliki government in Iraq,

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the State Department witness, under orders from the Department's leadership, refused to answer questions about the extent of corruption in the Iraqi government or its implications for U.S. interests in Iraq.

The Committee is seeking information relating to all of these matters. With regard to the specific issues raised in this letter, I expect a prompt and complete response by October 19, 2007.

Substandard Embassy Construction by First Kuwaiti

From August 17, 2007, to September 2, 2007, inspectors conducted tests of the fire protection systems at the Baghdad Embassy as part of the final accreditation process. These inspectors issued a report on September 4 that documented widespread deficiencies, including many that First Kuwaiti failed to repair despite repeated warnings.² For example, the report found critical deficiencies in the fire alarm detection systems:

None of the fire alarm detection systems were ready for testing at the time of arrival and none were completed during this site visit. The wiring methods used by the Contractor do not comply with the NFPA 70, *National Electric Code*, and will be very difficult to maintain. The Contractor continues to struggle with an understanding of the project specifications, despite guidance from OBO/OM/FIR.

The report also confirmed that despite earlier warnings, the underground mains that feed the sprinkler pipes in the Embassy building had been connected improperly and cracked under pressure:

The fire service mains are installed using non-approved materials and this was noted in a trip report dated 16 October, 2006. The Contractors has not corrected this situation despite having more than 20 breaks on the system since being placed in service in July 2007.

The report further noted:

[S]ome of the leaks repaired prior to our arrival failed a second time during our visit. These failures are occurring during normal use of the system and will continue to occur. There are at least 600 joints on the system, and the entire installation is not acceptable.

² U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Trip Report for Director Williams: Fire System Commissioning Trip — Baghdad NEC* (Sep. 4, 2007).

In the course of their work, the inspectors documented hundreds of violations of the contract specifications and the fire codes and regulations. These problems were so severe and widespread that the inspectors concluded that none of the buildings on the New Embassy Compound could be approved for occupancy. The report included the following findings:

- “The fire service underground piping and the repair methods used by the Contractor do not meet the project specifications or NFPA 24, *Standard for Underground Fire Service Mains*.”
- “Four leaks in the fire service mains were discovered and repaired while OBO/FIR Staff were on site. The Contractor is repairing leaks by replacing the coupling(s) and encasing the new joints in concrete. This method is also not in compliance with project specifications and NFPA 24 (referenced in the project specifications).”
- “Because the fire service mains are deficient, there is no reliable automatic fire sprinkler system coverage in any building on the compound. ... A few fire sprinkler systems were placed in service, but most were not sufficiently completed to place in service. However, without the fire service mains, the sprinkler systems remain inoperative.”
- “Most buildings have a complete lack of firestopping in fire rated walls and floors. Unless all openings in rated walls and floors are firestopped using approved methods and materials, a fire could spread very quickly from one area to another. This is especially true because the sprinklers are not in service.”
- “The NEC is not ready for tests and the Contractor could not provide a timeline for completion.”

The inspectors, who are licensed electrical engineers, also discovered significant problems with the electrical system and wiring. An attachment to their report documents unsafe splicing and incorrect wiring methods used throughout all buildings on the compound that do not meet either electrical codes or the contract specifications. The inspectors observed wiring problems with electrical panels, smoke detectors, and light fixtures. Many of these problems were found to be endemic throughout the Embassy. For instance, describing a photograph of faulty electrical work, inspectors noted: “Wrong wiring method. Free-wiring and open splices do not meet code or specifications.” Another observation notes: “Improper wiring methods used on light fixtures. Typical throughout building.”

The September 4, 2007, inspection report reveals that OBO and First Kuwaiti had been aware of these problems for nearly a year. In October 2006, OBO received reports that First Kuwaiti “is installing underground fire protection service mains that are not of the correct material, which has already resulted in stress cracking. This condition is unacceptable and was

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discussed with the Contractor.”³ However, according to the 2006 report, “the contractor responsible for the underground service mains was not receptive to any corrective action.”⁴

The October 2006 inspection, and subsequent inspections in March and May 2007, found numerous other problems in the fire system in the Baghdad Embassy complex. For instance an inspection report dated March 14, 2007, noted that “many of the electrical connection boxes and conduits are installed without any approved fittings.”⁵ It also found deficiencies in the firestopping between walls, including “openings between apartments and the apartments and corridors” throughout the staff diplomatic apartments. The inspectors warned that “all penetrations between apartments and each apartment and corridors must be suitably sealed to provide a minimum fire rating.”⁶

Many of these exact concerns were raised at the Committee’s hearing on July 26, but State Department officials dismissed them as minor problems akin to a “punch list” used during the purchase of a personal residence. For example, I asked General Williams about whether earlier reports of problems with embassy construction — such as those identified in interim fire inspection reports from October 2006 and March 2007 — were adequately addressed by OBO and First Kuwaiti. He responded: “There’s no way to have or to put in place a new embassy compound that does not meet our specifications.”⁷

General Williams continued:

I have found with this contractor that there’s never been any shyness on correcting what we bring to their attention. They want to get it right. They’ve tried very hard to get it right. They’re not perfect. I’ve never seen a perfect project. There’s always — when you’re installing something of this magnitude there are things that are not exactly the way they should be, and that’s the reason we have these check points in the process. We have a good process.⁸

³ U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Trip Report for Director Williams: Fire System Inspection Trip — Baghdad NEC* (Oct. 16, 2006).

⁴ *Id.*

⁵ U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Trip Report for Director Williams: Fire System Inspection Trip — Baghdad NEC* (Mar. 14, 2006).

⁶ *Id.*

⁷ House Committee on Oversight and Government Reform, Hearing on Allegations of Waste, Fraud, and Abuse and the New U.S. Embassy in Baghdad (July 26, 2007).

⁸ *Id.*

Contrary to General Williams' testimony, the final inspection shows that the problems pointed out in earlier reports had been ignored by both OBO and First Kuwaiti. It now appears clear that the Embassy will require major repairs simply to meet the project specifications.

The First Kuwaiti Kickback Scheme

Documents submitted by the Department of Justice to the Federal District Court in Illinois assert that the Managing Partner of First Kuwaiti, the prime contractor on the Embassy project, personally engaged in a kickback scheme with a major U.S. contractor in Iraq in order to obtain subcontracts. This individual is Wadih El Absi. The Committee invited Mr. El Absi to testify about his company's work on the Embassy at the July hearing, but he refused to appear. The involvement of Mr. El Absi in the kickback scheme was first reported by the Associated Press on September 20, 1997.⁹

In July 2007, Anthony J. Martin, a former subcontracts administrator and manager for Halliburton subsidiary KBR, pleaded guilty in federal court to violating the federal Anti-Kickback statute in connection with the award of a subcontract to First Kuwaiti. In so doing, he admitted that in 2003 he had conspired with Mr. El Absi in a kickback scheme to award over \$13 million worth of contracts to First Kuwaiti under the U.S. Army's Logistics Civil Augmentation Program (LOGCAP).¹⁰ According to the Justice Department, the amount of the kickbacks was incorporated into the price of the subcontracts and ultimately paid by the U.S. government.¹¹ Court documents obtained by the Committee state as follows:

- "In or about June 2003, [First Kuwaiti's] Managing Partner offered to pay and [Mr. Martin] agreed to accept a kickback for the purpose of obtaining and rewarding favorable treatment for [First Kuwaiti] in connection with a subcontract relating to LOGCAP III."
- "Managing Partner agreed to pay [Mr. Martin] approximately US\$170 per semi-tractor, per month, under any government subcontract the defendant would award to [First Kuwaiti]."

⁹ *Iraq Embassy Builder Tied to Kickbacks*, Associated Press (Sept. 20, 2007).

¹⁰ U.S. v. Anthony J. Martin, No. 07-40042 (C.D. Ill. filed May 16, 2007) (Information); Department of Justice, Press Release: Former KBR Employee Admits Violation of Anti-Kickback Act in Awarding Military Subcontract (July 13, 2007). The court documents do not identify the individual known as "Managing Partner."

¹¹ U.S. Department of Justice, Press Release: Former KBR Employee Admits Violation of Anti-Kickback Act in Awarding Military Subcontract (July 13, 2007).

- “In or about June 2003, prior to the bid process for the subcontract for the 50 semi-tractors and 50 reefer trailers, Managing Partner paid [Mr. Martin] approximately US\$10,000 in Kuwaiti Dinars as an advance on their kickback agreement.”
- “In or about June 2003, [Mr. Martin] awarded to [First Kuwaiti] the subcontract for the 50 semi-tractors and 50 reefer trailers in the amount of approximately US\$4,672,273.50. KBR designated the subcontract as Subcontract GU49-KU-S00167 (“Subcontract 167”).”¹²
- “Under the kickback agreement ... [Mr. Martin] was to receive approximately US\$50,240 for his awarding Subcontract 167 to [First Kuwaiti], including the US\$10,000 [he] had already received.”
- “On or after June 21, 2003, [Mr. Martin] and Managing Partner signed Subcontract 167 on behalf of their respective companies. The subcontract contained a notice prohibiting [First Kuwaiti] and its employees from offering any money, fee, commission, gift, gratuity, or thing of value to KBR employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a government subcontract.”¹³

According to the Justice Department, Mr. Martin also admitted at his plea hearing to awarding an \$8.87 million contract to First Kuwaiti. Under the kickback scheme, First Kuwaiti would have paid Mr. Martin approximately \$150,265.¹⁴

First Kuwaiti's Past Overcharges

The Committee has also obtained an audit issued by the Defense Contract Audit Agency (DCAA) that questioned over \$130 million in charges by First Kuwaiti for other work in Iraq. DCAA issued this audit on March 20, 2005, several months before the State Department awarded First Kuwaiti the contracts to construct the Embassy in Baghdad. Like the involvement of Mr. El Absi in a kickback scheme, this audit should also have been a red flag warning the State Department away from First Kuwaiti.

In its audit, DCAA reported that First Kuwaiti may have significantly overcharged the government on a subcontract under KBR's LOGCAP contract to provide living containers to the

¹² According to the Defense Contract Management Agency, Subcontract GU49-KU-S00167 under LOGCAP III was held by First Kuwaiti General Trading & Contracting Company.

¹³ *U.S. v. Anthony J. Martin*, No. 07-40042 (C.D. Ill. filed May 16, 2007) (Information).

¹⁴ Department of Justice, Press Release: Former KBR Employee Admits Violation of Anti-Kickback Act in Awarding Military Subcontract (July 13, 2007).

U.S. military. In particular, DCAA found that First Kuwaiti was charging double the median cost charged by its supplier. In the audit, DCAA found:

- First Kuwaiti “is a reseller of Red Sea Housing products. In a direct comparative analysis of [First Kuwaiti] living unit prices to those of Red Sea, the [First Kuwaiti] price is almost double that from Red Sea.”
- “KBR essentially paid [First Kuwaiti] ... over 260% of the price that KBR could have acquired comparable living units.”¹⁵

DCAA provided the Committee with a briefing on the overcharges in February 2007. During that briefing, DCAA stated that it had disapproved over \$50 million paid to KBR on the First Kuwaiti living container subcontracts. Slides from that briefing stated that KBR paid First Kuwaiti for “alleged delays and double handling costs” and that KBR “selectively used higher priced subcontractors without justification.”¹⁶ In September, DCAA told Committee staff that it had disapproved \$82 million paid to KBR on the First Kuwaiti living container subcontracts. DCAA also informed Committee staff that the remaining \$49 million in questioned costs were still being disputed by KBR. According to DCAA, the Army has not sustained any of the \$130 million in costs questioned by DCAA.¹⁷

In preparation for the Committee’s hearing in July, the Committee asked for information on the State Department’s decision to award the Baghdad Embassy construction contracts to First Kuwaiti on July 8, 2005, and September 16, 2005. Senior State Department officials told the Committee that prior to the award of the contracts, the State Department conducted a “thorough review” of First Kuwaiti’s past performance on federal contracts.¹⁸ They also told the Committee that First Kuwaiti’s “experience in the region” was a key factor in awarding the company a contract to build a facility to house embassy security guards.¹⁹ There was no mention of First Kuwaiti’s overcharges under the Defense Department contract.

¹⁵ Defense Contract Audit Agency, *Audit Report No. 2131-2005-22-000001* (Mar. 20, 2005).

¹⁶ Defense Contract Audit Agency, DCAA Contract Audit Support for Iraq Reconstruction (Feb. 2007).

¹⁷ House Committee on Oversight and Government Reform, Telephone Conversation with Defense Contract Audit Agency (Sept. 27, 2007).

¹⁸ House Committee on Oversight and Government Reform, Meeting with Deputy Assistant Secretary of State William Moser, et al. (July 20, 2006).

¹⁹ House Committee on Oversight and Government Reform, Hearing on Allegations of Waste, Fraud, and Abuse and the New U.S. Embassy in Baghdad (July 26, 2007).

Conclusion

Based on the information the Committee has received, I do not understand why the State Department would rely upon First Kuwaiti to build the largest embassy in the world. The bribery incidents, which occurred well before the contract award, implicate the company's Managing Partner in an illegal kickback scheme. DCAA's audit, which was released just months before the selection of First Kuwaiti, raises red flags about the company's performance and billing practices. These should be inescapable warnings about the wisdom of entrusting such a crucial project to First Kuwaiti.

I also do not understand why the Committee was misled by State Department officials about the status of the Embassy project at the July hearing. Given the importance of the Embassy to the State Department's mission in Iraq, the extent of the construction problems, and the prior warnings that had been raised, it would appear to be gross incompetence if the Department's senior management were unaware of the defects at the Embassy when they testified before the Committee.

Increasingly, it appears that the State Department's efforts in Iraq are in disarray. The Committee's investigation revealed that the Department's oversight of Blackwater has been exceptionally lax. Both the Committee's investigation and the testimony last week of Special Inspector General Stuart Bowen and Comptroller General David Walker raise serious questions about the effectiveness of Department's efforts to combat corruption in Iraq. Now the Committee is learning that the Embassy project, which is apparently being built by a contractor with a record of bribery and poor performance, has serious construction deficiencies.

I continue to believe that you should testify before the Committee to address these issues.

In addition, I ask that you provide the Committee with the following documents and information about the Embassy project by noon on October 19, 2007:

1. All documents sent to or from James L. Golden, Mary French, or Maj. Gen. Charles Williams relating to concerns, deficiencies, or substandard work involving construction of the Baghdad Embassy, including communications to and from officials at the State Department, embassy, other U.S. government agencies, First Kuwait General Trade and Contracting Company, KBR, and other inspectors;
2. All documents relating to the evaluation of the bids received for construction at the New Embassy Compound and adjacent guard camp;
3. All documents relating to First Kuwait's performance or involvement in any illegal activities under any other U.S. government contracts;

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4. All communications between State Department officials and First Kuwaiti officials regarding the Committee, the Committee's investigation, the Committee's document requests, or the Committee's hearing on July 26, 2007;
5. All communications between Wadih El Absi and State Department officials or contractors; and
6. A copy of the 32-page report submitted by the State Department to Congress referred to in *Iraq Embassy Cost Rises \$144 Million Amid Project Delays*, Washington Post (Oct. 7, 2007).

I also ask that the Department provide a briefing to Committee staff on or before October 19, 2007, on the current timeline for the completion of the new Baghdad embassy, the Department's plans for correcting the construction deficiencies, and the processes by which the State Department considers contractors' past performance and initiates suspension and debarment proceedings.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. Enclosed with this letter is additional information about how to respond to the Committee's document request. For your reference, I am attaching copies of the court documents and DCAA materials the Committee has obtained.

If you have any questions, please contact me or ask your staff to contact Theodore Chuang or Margaret Daum of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

Enclosures

cc: Tom Davis
Ranking Minority Member